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New York, NY 10036

In re Application of  
Mizushima et al.  
Application No. 10/008,443  
Filed: December 3, 2001  
Attorney Docket No. 6640/66050

OFFICE OF PETITIONS

DECISION REFUSING STATUS  
UNDER 37 CFR 1.47(a)

This is in response to the petition, filed May 13, 2002 (certificate of mailing date May 5, 2002), under 37 CFR. §1.47(a).

The petition under 37 CFR. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR. §1.136(a).

The above-identified application was filed on December 3, 2001, without an executed oath or declaration. Accordingly, on February 14, 2002, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set an extendable two-month period for reply of April 14, 2002.

In reply, applicant filed a petition, the surcharge for late filing of the declaration, and a partially executed declaration. To make the reply timely, a one (1) month extension of time was also submitted. In support of the petition, applicants submitted a statement of facts.

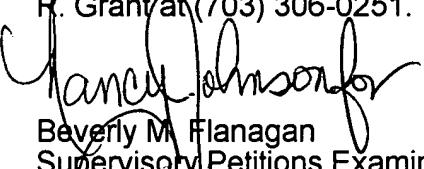
A grantable petition under 37 CFR. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The instant petition does not satisfy requirement (1).

As to item (1), Rule 47 applicant has failed to show that co-inventor Hagioda was ever presented with a copy of the application papers. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d). The statement of facts indicates only the declaration and assignment documents were sent to inventor Hagioda. Inventor Hagioda must be presented with the opportunity to sign the application papers before rule 47 status will be granted.

Further correspondence with respect to this matter should be addressed as follows:

- By mail:                   Commissioner for Patents  
                                Box DAC  
                                Washington, D.C. 20231
- By FAX:                   (703) 308-6916  
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                                2201 S. Clark Place  
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Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

  
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